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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/534,104

05/06/2005

Yuji Nishida

46244

5136

20736 7590 03/29/2011

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EXAMINER

STULII, VERA

ART UNIT

PAPER NUMBER

1781

MAIL DATE

DELIVERY MODE

03/29/2011

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/534,104	<b>Applicant(s)</b> NISHIDA ET AL.	
	<b>Examiner</b> VERA STULII	<b>Art Unit</b> 1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 3-6,8,12,13,15-17,20,22,25,26 and 34-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 3-6,8,12,13,15-17,20,22,25,26 and 34-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>09/24/2010</u> .  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 09/24/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 3-6, 8, 25-26 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jangaard et al in view of Applicants' admission of the prior art for the same reasons as stated in the Final Office action mailed 12/08/2009.

Claims 12, 13, 15, 16, 25, 26 and 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nakanishi et al (US 4,698,224) in view of Pugh et al. and Applicants' admission of the prior art for the same reasons as stated in the Final Office action mailed 12/08/2009.

Claims 17, 20, 22, 25-26 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable Nakanishi et al (US 4,698,224) in view of Pugh et al., Applicants' admission of the prior art and further in view of Jangaard et al for the same reasons as stated in the Final Office action mailed 12/08/2009.

***Response to Arguments***

Applicant's arguments filed 03/08/2010 have been fully considered but they are not persuasive.

In response to applicant's arguments against the references individually (page 7 of the Reply to the Final Office action mailed 12/08/2009, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Jangaard et al is not relied upon as a teaching of fermentation stopping. Applicants' Admission of the prior art is relied upon as a teaching of fermentation stopping. As admitted by applicants, the fermentation stopping method was well known in the art as a method of manufacturing beer with low-alcohol content (Page 3 § 2 of Specification). Further in this regard, it is noted that, as admitted by applicants, it is a common concern among fermented beverages to prevent off-flavors from developing during a yeast-based fermentation step" (Page 2 § 2 of Specification). Jangaard is relied upon as a teaching of a method for production of fermented beverage (beer) with no hydrogen sulfide that produces sulfur smell in beer, wherein L-methionine is added to the wort (page 46; Tables I, II; page 48 left column §1). Since Jangaard et al disclose production of beer in general (without specifying alcohol content), one of ordinary skill in the art would have been motivated to employ teachings of Jangaard et al in the production of low-alcoholic beer through fermentation stopping in order to avoid production of the sulfur smell. Further in this regard, it is noted that, as admitted by applicants, it is a common concern

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among fermented beverages to prevent off-flavors from developing during a yeast-based fermentation step” (Page 2 § 2 of Specification). Therefore, since Jangaard discloses elimination of sulfur smell during the fermentation step in production of beer in general, regardless the alcohol content, and Applicants admits the common problem of elimination of off-flavors and smells during fermentation of wort in when the method of stopping fermentation employed, one of ordinary skill in the art would have been motivated to employ teachings of Jangaard et al in the production of low-alcoholic beer by fermentation stopping process in order to avoid production of sulfur smell as taught by Jangaard et al. One of ordinary skill in the art would have been motivated to do so, since the problem of sulfur smell production and the solution of adding L-methionine to the wort was taught by Jangaard et al. One of ordinary skill in the art would have been further motivated to include additional step of addition of L-methionine to the wort in stopping fermentation process in order to avoid the common problem of sulfur smell development during fermentation step. One of ordinary skill in the art would have been further motivated to do so, since addition of L-methionine to the wort reduces production of hydrogen sulfide, and eliminated sulfur smell which significantly improves the taste, aroma, marketability and consumer satisfaction of the final beer beverage.

In response to Applicants’ arguments regarding the primary fermentation, it is noted that Applicants’ Admission of the prior art is relied upon as a teaching of primary fermentation stopping.

In response to applicant's arguments against the references individually (pages 9 and 10 of the Reply), one cannot show nonobviousness by attacking references

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individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Nakanishi et al and Pugh et al are not relied upon as a teaching of fermentation stopping. Applicants' Admission of the prior art is relied upon as a teaching of fermentation stopping.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vera Stulii/  
Examiner, Art Unit 1781